

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

JOSIAH KUENZI	:	NO. 08-3906
Plaintiff,	:	
	:	
v.	:	
	:	
CAPITAL ONE AUTO FINANCE,	:	
INC., et al.	:	
Defendant.	:	

**AFFIDAVIT OF ADAMS YERGER
FOR CAPITAL ONE AUTO FINANCE, INC.**

1. I declare that I am an employee of Capital One Auto Finance, Inc. ("Capital One"), and that I am qualified to make this declaration based on my personal knowledge.
2. I hereby certify that the Blank Check Owner's Manual, attached hereto as Exhibit "A," containing a total of six pages, is a correct and accurate record of the Blank Check Owner's Manual that Capital One customarily sends to applicants for Blank Check automobile and/or motorcycle loans, and that all entries on Exhibit A were made, at or near the time of the occurrence of the matters set forth, by, or from information transmitted by, a person with knowledge of those matters.
3. When an applicant applies for a Capital One Blank Check vehicle loan, they enter their information into an online form on a website.
4. Capital One's automated computer systems pull credit information regarding the applicant, and those automated systems approve or decline the application in accord with Capital One's currently-applicable lending criteria.
5. Capital One automatically processes approved loan requests by sending the Blank Check as part of a packet of documents entitled "Blank Check Owner's

Manual," which includes Truth-In-Lending Act ("TILA") disclosures along with other instructions.

6. Capital One's automated systems generate the Blank Check Owner's Manual, which is sent automatically to the address provided by the applicant.

7. The Blank Check Owner's Manual is a bound packet of double-sided 8 1/2 x 11 paper, folded in half.

8. Included in the Blank Check Owner's Manual is the Blank Check, which the applicant must tear out of the Owner's Manual packet in order to present it at a vehicle dealership. See Exh. A at p. 2.

9. Also contained in the Blank Check Owner's Manual are the applicable TILA disclosures. Id. at p. 4.

10. The Blank Check includes the customer's acknowledgement of receipt of the TILA disclosures, which states:

NOTE: By signing and negotiating this check, you become bound by and acknowledge receipt of the Note and Security Agreement delivered to you by Capital One Auto Finance, Inc., and the Truth In Lending disclosure that corresponds to the Model Year of the vehicle purchased and bearing the above check number.

Id. at p. 2.

11. Capital One customarily does not send Blank Checks to its customers in plain envelopes, or unaccompanied by TILA disclosures.

12. The TILA disclosures customarily included in Capital One's Blank Check Owner's Manuals contain reference to the check number included on the Blank Check enclosed in the Manual.

13. The Truth-In-Lending disclosures included in Exhibit A bear the same check number (#4910305) as the Blank Check that Kuenzi was issued by Capital One.

Id. at pp. 2, 4.

14. I further certify that the Blank Check Owner's Manual attached hereto as Exhibit A was kept in the course of the regularly conducted activity of Capital One.

15. I further certify that the Blank Check Owner's Manual was made by Capital One as a regular practice.

16. I declare and certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and has been executed this 23rd day of September, 2010.


Adams Yerger
Capital One Auto Finance, Inc.